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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Salas, Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: In the Matter of Implementation of the Pay
Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of
1996, CC Docket No. 96-128

Dear Ms. Salas:

Please find enclosed for filing an original and fourteen
copies of the Reply Comments of the RBOC/GTE/SNET Payphone
Coalition Regarding the Airtouch Petition for Waiver in the
above-captioned proceeding.

Please date-stamp and return the extra copy provided to the
individual delivering this package.

Sincerely,

Michael K Kellogg

Michael K. Kellogg

Enclosures

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

RECEIVED

JAN 22 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of

Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-128

**REPLY COMMENTS OF
THE RBOC/GTE/SNET PAYPHONE COALITION
REGARDING THE AIRTOUCH PETITION FOR WAIVER**

In its Opposition to AirTouch
AirTouch Petition was legal nor
obligation on AirTouch to pay P
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payment of per-call compensation to PSPs; and 4) AirTouch established no substantial harm due
to any per-call compensation obligations imposed on it by the IXC's.

The Comments filed in support of its petition add little to the wholly unpersuasive
arguments that AirTouch has already put forward. Quite simply, there is no legal or factual basis
to support a waiver of the obligation that IXCs compensate PSPs for the payphone services that
payphone users consume.

I. The Coding Digit Waiver Does Not Justify a Waiver of Per-Call Compensation

The very purpose of the coding digit waiver was to ensure that PSPs would receive per-call compensation during the time that LECs and IXC's worked out the technical details of implementation of Flex ANI. See Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, DA 97-2162, ¶¶ 2, 9 (rel. Oct. 7, 1997) ("Waiver Order"). AirTouch's claim -- reiterated by many of the comments filed in support of its petition, see, e.g., Comments of Vanguard Cellular Systems, Inc. at 3-4 (filed Jan. 13, 1998); Comments of PageMart Wireless, Inc. at 3-4 (filed Jan. 15, 1998) -- that the coding digit waiver justifies a waiver of per-call compensation obligations is therefore hopelessly wrong.¹

Furthermore, there is no inequity to requiring IXC's to compensate PSPs for the payphone services that they actually consume. Cf. Comments of Telecommunications Resellers

¹Nor is there any merit to the argument that the D.C. Circuit's decision to uphold the "carrier pays" compensation mechanism was based on the understanding that call blocking was immediately and universally available. Cf. Comments of PageMart Wireless, Inc. at 2-3; Comments of Mobile Telecommunication Technologies Corp. at 2-3 (filed Jan. 15, 1998). To the contrary, the court accepted that such blocking was not currently available, but that its future development would permit IXC's to offer call blocking to their customers. See Illinois Pub. Telecomm. Ass'n v. FCC, 117 F.3d 555, 566-67 (D.C. Cir. 1997) ("[T]he Commission reasonably concluded that carriers can and will develop blocking technology." (emphasis added)). No party has given the Commission any reason to reconsider that conclusion: to the contrary, call blocking has already been widely implemented, as AirTouch admits. This argument is in all events tangential to the AirTouch Petition, which does not criticize (or even acknowledge) the "carrier pays" mechanism.

One party also claims that the IXC's have no incentive to negotiate for lower per-call charges because they will pass them through to their customers in any event. See Comments of American Alpha Dispatching, et al., at 3 (filed Jan. 15, 1998). This argument is just silly -- of course the IXC's have every incentive to minimize per-call compensation charges, as their vigorous participation in the underlying rulemaking proceeding demonstrates.

Association at 4 (filed Jan. 15, 1998). Even if one were to assume that IXCs are currently unable to block some payphone calls in real time -- which is not the case for most payphone calls -- all PSPs are obligated to make their payphones available for subscriber 800 and dial-around calls. The Commission intended to establish a fair default rate; indeed, the D.C. Circuit held that the possibility that IXCs would be able to block calls could not save a default rate that was otherwise unjustified. See Illinois Pub. Telecomm., 117 F.3d at 564. As the Commission has already noted, it established a default per-call rate precisely “because certain call blocking capabilities are not yet available to participants in the provision of access code and subscriber 800 calls from a payphone.” Memorandum Opinion and Order, CC Docket No. 96-128, DA 97-2622, ¶ 8 (rel. Dec. 17, 1997) (“Dec. 17 Order”). The FCC's decision did no more than give effect to the clear command of federal law: PSPs are to be provided with fair compensation for “each and every” call made from their payphones. 47 U.S.C. § 276(b)(1)(A).

II. No Party Establishes a Threat of Substantial Harm

The Commission found that the coding digit waiver would “not significantly harm any parties.” Waiver Order ¶ 12. If there was any doubt whether “any parties” included paging companies, the Commission resolved it in denying PCIA's request for a stay. See Dec. 17 Order ¶ 10. None of the comments gives any support to AirTouch's claims to the contrary.

Indeed, AirTouch's own account of the extent of its exposure to per-call charges -- taking its numbers at face value -- rebuts, rather than strengthens, its claim. See AirTouch Comments at 2-3. Even if the subscribers who request blocking from AirTouch still receive 6-8 calls from payphones per month, the total amount of per-call compensation to be passed through would be

between \$1.70 and \$2.27 per month, hardly a crushing burden.² And because AirTouch is no more or less able than any other paging carrier to avoid these compensation obligations, it cannot claim “competitive” harm.³

The “Dispatching Parties” claim that “American Alpha” saw a 14% increase in its IXC bill, due to payphones.⁴ Comments of American Alpha Dispatch Services, Inc., et al., at 5 (filed Jan. 15, 1998). Of course, if a business relies on payphone calls for a substantial percentage of its calling, it is predictable that the IXCs' decision to pass through per-call compensation charges will lead to some increase in the subscriber's bill for 800 subscription. But this is the natural result of businesses paying for what they used to receive virtually free, that is, payphone services. Notably, American Alpha makes no claim that it has attempted to block any calls; presumably payphone services are worth the added cost.

²Of course, there is good reason to question whether the 6-8 call figure is accurate. Obviously, those subscribers who commonly receive calls from payphones as part of their business are those who are least likely to ask that the calls be blocked. The average number of calls to be received by those who opt for AirTouch's “blocking” option is therefore likely to be significantly lower than average.

³Moreover, AirTouch conspicuously declines to state that it has actually paid anything to the IXCs as a result of these allegedly “unblockable” calls. The APCC has suggested that the IXCs may not be able to bill AirTouch for these calls. See APCC Opposition at 4 (filed January 15, 1998).

⁴The cautious language the Dispatching Parties employ -- “due to pay telephone charges” -- begs the question of the source of the alleged increase. Was the rise due to across-the-board increases imposed by the IXC but blamed on the Commission and PSPs? Per-call compensation for dial-around calls? Per-call compensation for subscriber 800 calls? The comments do not say.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael K Kellogg" followed by a flourish.

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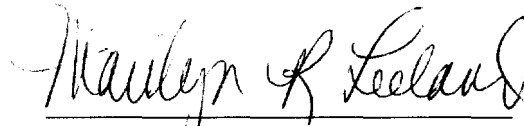
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January 22, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 1998, I caused copies of the foregoing Reply Comments of the RBOC/GTE/SNET Payphone Coalition Regarding the Airtouch Petition for Waiver to be served upon the parties on the attached service list by first-class mail.


Marilyn R. Leeland

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Implementation of the Pay Telephone Reclassification and
Compensation Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128, Second Report and Order

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